

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL MINTHORN,

Plaintiff,

v.

Civil Action No. 14-14114

Honorable Avern Cohn

Magistrate Judge David R. Grand

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

**ORDER LIFTING STAY [16], STRIKING PLAINTIFF'S SUMMARY JUDGMENT
MOTION AND PROPOSED AMENDED SUMMARY JUDGMENT MOTION [9, 13],
DENYING MOTION FOR SUBSTITUTION OF COUNSEL [11] AND TERMINATING
ATTORNEY RICHARD DOUD AND THE FIRM OF DAVIDSON, BREEN, DOUD,
STEELE & FERGUSON, P.C. AS PLAINTIFF'S COUNSEL OF RECORD, DENYING
PLAINTIFF'S MOTION FOR LEAVE TO AMEND SUMMARY JUDGMENT MOTION
[12], DENYING AS MOOT DEFENDANT'S MOTION FOR EXTENSION OF TIME TO
RESPOND TO PLAINTIFF'S PROPOSED AMENDED SUMMARY JUDGMENT
MOTION [15], AND AMENDING SCHEDULING ORDER [8]**

Plaintiff Michael Minthorn ("Minthorn") commenced this action pursuant to 42 U.S.C. § 405(g), challenging a final decision of defendant Commissioner of Social Security ("Commissioner") that he was no longer disabled as of August 30, 2011, and therefore not entitled thereafter to continue receiving Disability Insurance Benefits ("DIB") under the Social Security Act (the "Act"). [1]. This action has been referred to the undersigned for all pretrial purposes pursuant to 28 U.S.C. §636(b)(1). [2].

When Minthorn commenced this action, he was represented by attorney Richard Doud of the firm Davidson, Breen, Doud, Steele & Ferguson, P.C. (the "Firm"). Doud filed a motion for summary judgment on Minthorn's behalf on February 11, 2015. [9]. The Commissioner was given an extension of time to respond to Minthorn's motion (and to file its own summary

judgment motion) until April 13, 2015. On April 10, 2015, attorney James Smith of the Firm moved to substitute into the action for attorney Doud on behalf of Minthorn. [11]. On that same date, Minthorn (this time through attorney Smith) filed a motion for leave to amend his summary judgment motion as well as a proposed amended summary judgment motion. [12, 13]. The Commissioner filed a response to Minthorn's motion for leave indicating that it did not object to that motion, provided it was afforded the typical time period to respond. [14]. On May 12, 2015, the Commissioner filed a motion for extension of time to respond to Minthorn's proposed amended summary judgment motion. [15].

On May 20, 2015, this action was transferred to a three-judge panel (the "Panel") to address the Firm's representation of Social Security claimants in the Eastern District of Michigan. [5/20/15 docket entry]. Pursuant to 15-AO-033, on June 9, 2015, the Panel administratively stayed this action. [16]. On October 19, 2015, pursuant to 15-AO-045, the Panel determined that affected cases (including this one) would be transferred back to the originally assigned judge, and that it would be each such judge's responsibility to determine when to lift the stay. [10/19/15 docket entry].

The Court is advised that the Firm has notified Minthorn that he would have until December 30, 2015, to retain a new attorney and have that attorney file an appearance in this action. Minthorn was also notified that if no such appearance was filed by December 30, 2015, the Court would consider Minthorn to be continuing his appeal without legal representation, *i.e.*, that he would be representing himself in this action *pro se*. [17]. Because no new attorney has appeared on Minthorn's behalf, the Court deems him to be representing himself *pro se*.

In light of these developments, **IT IS ORDERED** that the previously entered **STAY [16] IS LIFTED**. Because the Firm may not represent Minthorn in this action, **IT IS ORDERED**

that attorney Smith's motion to substitute [11] is **DENIED**, and attorney Doud and the Firm are **TERMINATED AS COUNSEL OF RECORD IN THIS ACTION**.

In light the Panel's conclusion that the Firm may not represent Minthorn in this matter, **IT IS ORDERED** that Minthorn's motion for leave to file an amended summary judgment motion [12] is **DENIED**, and Minthorn's motion for summary judgment and proposed amended motion for summary judgment [9, 13] are **STRICKEN**. Further, the Commissioner's motion for extension of time [15] is **DENIED AS MOOT**.

In light of the foregoing, the Scheduling Order [8] is amended as follows:

- Minthorn shall have until **February 12, 2016**, to file a new summary judgment motion. As Minthorn is proceeding *pro se*, his filing need not be in the form of a formal legal brief – rather, Minthorn may simply advise the Court in writing as to why he believes the Commissioner's decision is in error.
- The Commissioner shall have until **March 11, 2016**, to file a response to Minthorn's summary judgment materials and to file its own motion for summary judgment.
- Minthorn shall have until **March 25, 2016**, to file a reply brief.

SO ORDERED.

Dated: January 11, 2016
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate Judge

NOTICE TO THE PARTIES REGARDING OBJECTIONS

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140

(1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 508 (6th Cir.1991); *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir.1981). The filing of objections which raise some issues, but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir.1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir.1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this magistrate judge.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on January 11, 2016.

s/Eddrey O. Butts _____
EDDREY O. BUTTS
Case Manager